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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
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Implementation of the Local	)	**CC Docket No. 96-98**
Competition Provisions in the	)	
Telecommunications Act of 1996	)	

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REPLY COMMENTS OF FRONTIER CORPORATION

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Summary

In this reply, Frontier will address the concerns raised by a number of commentors, particularly by those parties that set forth strained interpretations of the Act that would defeat its very purposes. The Commission should act on the parties' proposals in a manner that best conforms to the Act's requirements and that embraces Frontier's six core principles. In these reply comments, Frontier points out the following defects of certain parties:

First, the Commission must reject claims calling for the Commission not to adopt national standards that establish a uniform set of core rights and responsibilities consistent with sections 251 and 252 of the Act. Not only does the Act mandate active Commission policy-making at this early stage of implementation, national, baseline rules are essential if the state-conducted negotiation, mediation and arbitration process is to succeed in fulfilling the Act's promise.

Second, the Commission must reject claims calling for the Commission to prohibit any telecommunications carrier from ordering and utilizing unbundled networks elements for any lawful purpose. The claims by some ILECs that such elements may not be used as a substitute for interstate access services is completely unsupportable as a matter of statutory construction. Moreover, the argument that such use will result in price arbitrage -- which Congress assertedly could not have contemplated as a defense to competition -- is incorrect. To the extent that arbitrage occurs, it will be beneficial, because it will force prices for access services toward economic costs. Moreover, the statutory interpretations proffered principally by the Bell companies in support of the theory that unbundled elements may only be used for

local services are self-serving and incorrect. Sections 251(c)(2) and 251(c)(3) cannot reasonably be read as limiting the types of services that requesting telecommunications carriers may provide through the use of unbundled elements and points of interconnection.

Third, the Commission should also reject the claims of some ILECs that they be made whole through the supra-normal pricing of unbundled elements and points of interconnection. The Act contemplates that the pricing of unbundled elements and points of interconnection be set as if a competitive local market exists. A firm producing goods or services in a competitive market would recover only those forward-looking costs (including the risk-adjusted cost of capital and joint and common costs) that would be incurred by efficient producers. The Act establishes this pricing model and, despite the claims of some ILECs to the contrary, any such resulting price levels are fully compensatory.

Fourth, the Commission must reject proposals to restrict resale except as explicitly provided for in the Act. Some ILECs' claims that the Commission should create numerous implied exceptions to the Act's resale mandate are incorrect as a matter of statutory construction and their adoption would constitute bad public policy in any event.

The choices facing the Commission stand in stark contrast. It may embrace the Act's pro-competitive aims by endorsing Frontier's six core principles or it may accept the reactive claims of some ILECs. There is little question which path the Commission must choose.

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Introduction

Frontier Corporation ("Frontier"), on behalf of its incumbent local exchange, competitive local exchange, interexchange and wireless affiliates, submits this reply to the comments received in response to the Commission's Notice initiating this proceeding.[1] The future of the telecommunications industry is at stake in this proceeding and the proverbial line in the sand has been drawn between those who want local competition and those who do not. The Commission may opt essentially for one of two paths advocated by each respective group of commentors: (1) it may accept the pleas of the large incumbent local exchange carriers ("ILECs") to preserve the *status quo* in a slowly-evolving form and thoroughly eviscerate the purposes of the Telecommunications Act of 1996 ("Act"); or (2) it may adopt regulations to enforce the central tenets of the Act that will facilitate the introduction of the new competitive paradigm mandated by Congress. The six core principles set forth by Frontier in its comments were designed to

[1] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Dkt. 96-98, Notice of Proposed Rulemaking, FCC 96-182 (April 19, 1996) ("Notice").

assist the Commission in rejecting the counter-productive first alternative and embracing the positive objectives of the second. By so doing, the Commission will chart the difficult course for the re-engineering of the local exchange business such that consumers reap the benefits that competition has brought to every other aspect of the telecommunications industry.

Stripped of non-economic arguments, it is shown in this reply that the comments, when viewed on their merits, support the six core principles presented by Frontier in its comments. The six core principles are:

1. National standards to promote efficiency and competition;

2. Unrestricted purchases of unbundled elements and interconnection by all telecommunications carriers;

3. A mandatory minimum set of unbundled network elements and associated interconnection points;

4. TSLIRC pricing for unbundled elements, interconnection and transport/termination;

5. Strict enforcement of resale obligations, without exceptions; and

6. Reciprocal compensation limited to additional costs.

Argument

I. THE COMMENTS SUPPORT BINDING NATIONAL STANDARDS FOR THE SUCCESS OF THE NEGOTIATION PROCESS AND RAPID COMPETITIVE ENTRY INTO THE LOCAL EXCHANGE BUSINESS.

Section 251(d)(1) of the Act requires the Commission to establish regulations implementing the substantive provisions of section 251 *within six months* of the date of enactment. Both the first-mover requirement that the Commission promulgate regulations and the time within which it must do so demonstrate the intent of Congress to establish a *national* regime that promotes rapid competitive entry into the local exchange business. Thus, the claims of some ILECs[2] and state regulators[3] that the negotiation, mediation and arbitration provisions of section 252 confer on this Commission only a minor initial role in the process are incorrect.

Section 251 imposes a number of obligations on ILECs and incorporates the pricing standards set forth in section 252. The Act requires the Commission to adopt regulations implementing those provisions and to do so rapidly.[4] It preserves to the states the right to adopt *additional* regulations that are "consistent with the requirements

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[2]E.g., USTA at 5-8; Bell Atlantic at 2-8; NYNEX at 3-4.

[3]E.g., NARUC, passim; New York at 5-11.

[4]47 U.S.C. § 251(d)(1).

of this section;"[5] and do "not substantially prevent implementation of the requirements of this section and the purposes of this part."[6]

The negotiation, arbitration and mediation provisions of section 252 do not -- as some incumbent LECs would have it[7] -- displace federal preeminence in defining what the substantive provisions of sections 251 and 252 mean. Those proceedings are to take place within the context of the regulations that section 251(d)(1) requires the Commission to adopt. The Act permits the states to fill in the interstices -- within the context of a uniform national policy -- subject to review by federal district courts or action by this Commission in specified circumstances.[8] The Act -- by its own words -- does not delegate to the states the power to adopt those policies in the first instance.

In addition, the Act limits state discretion in a number of significant respects, further demonstrating the subordinate role of the states. The Act requires that any arbitrated agreement comply with the "requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251."[9] Similarly,

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[5]47 U.S.C. § 251(d)(3)(B).

[6]47 U.S.C. § 251(d)(3)(C).

[7]See supra at 3 n.2.

[8]47 U.S.C. §§ 252(e)(5), 252(e)(6).

[9]47 U.S.C. § 252(e)(2)(B).

statements of generally available terms filed by ILECs must comply "with section 251 and the regulations thereunder."[10]

These statutory provisions show a clear understanding on the part of the Congress that the state-supervised negotiation, mediation and arbitration process will be conducted under the aegis of federal principles applicable to all states. The negotiation, mediation and arbitration process is designed, under the Act, to supply the details in particular cases. For example, while this Commission is to establish pricing methodologies, the states will, in the first instance, establish or review actual prices for specific elements or services. The Act does not contemplate that the basic policy decisions would be left to the states in the first instance.

This interpretation of the statute is, moreover, fully consistent with the purposes of the Act and is essential if the negotiation, mediation and arbitration process is to work at all. The Act created a *national*, pro-competitive policy to govern the telecommunications industry.[11] Such a national policy cannot be implemented by disjointed policy decisions by numerous state and other authorities. This approach would result in a balkanized pattern of initial implementation that would disserve the goals of the Act.[12]

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[10]47 U.S.C. § 252(f)(2)

[11]See DOJ at 8-15.

[12]This is not to say that the role of the states in implementing the Act's pro-competitive goals is unimportant. The states will need to address and resolve numerous, thorny issues that will be critical in determining whether the purposes of the Act are fulfilled or frustrated. It is only to say that the required state action must take place within the context of uniform and binding federal regulations.

A major flaw in the claims of some ILECs is an assumption that the negotiation, mediation and arbitration process is central to the Act -- and therefore, this Commission should do little or nothing to frame that process[13] -- are wrong. This claim assumes that negotiation will be the main vehicle through which most new entrants will become interconnecting local exchange competitors. That, however, is not likely to be the case. Indeed, such "negotiation" to date has been slow, frustrating and infected by the unusually strong bargaining power of the ILECs in those discussions. Moreover, smaller competitors cannot afford the resources to negotiate with over one thousand ILECs. Thus, in most cases, smaller competitors will purchase the elements and services that they need from the "Statements of Generally Available Terms," provided for in section 252(f), or simply adopt the terms of agreements previously reviewed by the states pursuant to this Commission's section 251 requirements.

The incentives -- particularly for the Bell companies -- lie precisely in the opposite direction from competitive markets. Section 271(c)(2)(A) provides that a Bell company may, subject to compliance with the competitive checklist set forth in section 271(c)(2)(B), enter the in-state, interexchange business if it is "providing access and interconnection pursuant to *one* or more agreements ..."[14] The major incentive, of course, for the Bell

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Similarly, although the Act does provide the states limited discretion to act in ways inconsistent with its terms (in approving negotiated agreements), that limited discretion cannot be read to displace this Commission's role of establishing a baseline set of uniform federal regulations.

[13] E.g., Bell Atlantic at 2-8.

[14] 47 U.S.C. § 271(c)(2)(A)(i) (emphasis added).

companies is to seek easy entry into the in-state, interexchange business. Thus, the early and only incentive of a Bell company in such negotiations will be to reach an initial deal -- most likely, a sweetheart deal -- with one requesting telecommunications carrier. Without clear regulations, other requesting telecommunications carriers that follow will not have their own needs met, because the Bell company has no incentive to strike materially different or additional deals with those that follow.

The negotiation process, if unconstrained by binding and clearly-articulated federal regulations, will likely result in a lowest common denominator outcome that might satisfy the immediate needs of one type of competitor. Such a result is not consistent with the Act's pro-competitive mandate. As the Department of Justice correctly describes:

> The Act places substantial reliance on negotiations between ILECs and their potential competitors to implement the detailed requirements of interconnection and unbundling, but such issues are sufficiently complex to allow lengthy delays in negotiations, *consequently the contemplated private negotiations cannot be expected to succeed quickly in the absence of clear national guidelines or standards.*[15]

The Act contemplates that this Commission will adopt national regulations -- establishing an effective core set of rights and responsibilities -- to govern the negotiation, mediation and arbitration process. To do otherwise would undermine the very purposes of the Act.

[15]DOJ at 9 (emphasis added).

II. UNBUNDLED ELEMENTS MAY BE USED FOR ANY LAWFUL PURPOSE.

Through tortured rendering of the Act's plain language, certain ILECs assert that the Act does not permit unbundled elements and points of interconnection to be used as alternatives to access services. They read into the language of sections 251(c)(2) and (c)(3) requirements that do not exist. Thus, they contend that a requesting telecommunications carrier must offer both telephone exchange service and exchange access in order to purchase interconnection. They further assert that the same limitation must be read into section 251(c)(3). Under this approach, a requesting telecommunications carrier may not use unbundled elements as alternatives to access services. On this basis, they contend that the Commission's Part 69 interstate access charge regime continues to apply to the provision of interstate access services even where a carrier believes that the use of unbundled elements, interconnection and transport/termination makes more sense.[16]

This analysis turns the plain language of the Act on its head. It also makes no sense as a matter of public policy. First, the argument starts from the premise that sections 251(c)(2) and 251(c)(3) somehow impose duties upon the *requesting* telecommunications carriers.[17] That premise ignores the plain words of the statute. Section 251(c) imposes "additional duties [upon] incumbent local exchange carriers." In

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[16] See, e.g., USTA at 59-66; Bell Atlantic at 10-23; BellSouth at 60-63.

[17] See, e.g., USTA at 59.

no sense does the statute define what requesting telecommunications carriers must do with the unbundled network elements and points of interconnection that they order. Thus, while section 251(c)(2)(A) requires ILECs to offer interconnection to *any* telecommunications carrier at any technically feasible point for the "routing and transmission of telephone exchange service and exchange access," it does not require that requesting telecommunications provider use such interconnection for either one or the other purpose (or for both purposes, for that matter). It requires only that ILECs offer interconnection and unbundled elements in such a *manner* that they *may* be used for one or both purposes.[18] That is, unbundled elements, interconnection and transport/termination must be designed so as to "fit" to be used for either local exchange or exchange access services.

Second, section 251(c)(3) likewise does not contain the limitation that the Bell companies divine. It requires ILECs to offer unbundled elements for the provision "of a telecommunications service," which plainly encompasses interexchange and other services that do not necessarily equate to access.[19] It is, therefore, evident that the statute permits the use of unbundled elements and points of interconnection for use in providing interexchange toll services. If a requesting telecommunications carrier purchases unbundled elements, it may choose to (but need not) use those elements as an alternative to Part 69 access.

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[18] See Frontier at 8-9.

[19] See Notice, ¶ 165.

The so-called arbitrage possibility that ILECs raise to frighten the Commission[20] is more smoke than substance. These companies are certainly correct that the statutory mandate for the pricing of points of interconnection and unbundled elements will not equate to the current, subsidy-laden levels of interstate access charges. Thus, some arbitrage may occur where ILECs fail to adjust the rate levels of their access charges.

The correct public policy response, however, is not to attempt to police -- or, more accurately, to permit ILECs to police -- the uses to which their competitors place points of interconnection and unbundled elements. The existence of arbitrage opportunities triggers market-place pressures to impose discipline on access charge pricing, which is largely under the major ILECs' control. Price cap carriers have flexibility to reduce (and even increase) access charges if they so desire. It is mostly within their control to minimize or eliminate arbitrage opportunities and they should be encouraged to do so. To the extent that access charge reform is needed to further refine Part 69 and corresponding intrastate access charge regimes -- and Frontier agrees that it is -- that process should commence.

However, as the Commission has concluded, artificial distinctions between access for the provision of local services and access for the provision of long distance services are untenable and unsustainable.[21] From an economic standpoint, they reduce consumer welfare and limit public benefits. Moreover, the Commission has historically

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[20] E.g., USTA at 52-54

[21] Notice, ¶ 146.

welcomed the aid of arbitrage to help assure that regulated rates properly reflect costs.[22] More importantly, the Act did not create any "arbitrage opportunity" exception to its interconnection and unbundling requirements. The Commission should decline to read such an exception into the Act and by so doing distort the plain meaning of the Act beyond all possible recognition.

III. THE ACT REQUIRES THE COMMISSION TO ADOPT A FORWARD-LOOKING TOTAL SERVICE INCREMENTAL COST STANDARD FOR THE PRICING OF INTERCONNECTION, UNBUNDLED ELEMENTS AND TRANSPORT/TERMINATION.

There are basically two views expressed in the comments regarding the proper pricing of interconnection, unbundled elements and transport/termination. One view is that new offerings should be priced on a competitive basis -- namely, using total service long run incremental cost ("TSLRIC").[23] That is, these offerings should be priced as if the ILECs operated in a substantially competitive market. This view is expressed by progressive incumbent and competitive local exchange company interests, interexchange carriers, and consumer groups.

The other view presents flashbacks to the stone age of monopoly pricing. This view argues that historical costs should be the touchstone for establishing future pricing

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[22] See Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities, Dkt. 20097, Report and Order, 60 FCC 2d 261 (9176).

[23] See DOJ, CFA/CU, AT&T, Comptel, Frontier, MCI and Sprint.

of interconnection, unbundled elements and transport/termination. This monopoly pricing view is expressed predominantly by those who apparently do not believe that significant local competition shall evolve in their markets and who believe that they are entitled to maintain the cash flows that prevailed in a monopoly market. They appear comfortable with the idea that pricing for interconnection, unbundling, and transport/termination should be above economic levels -- thus creating a price umbrella for marginal -- highly specialized -- local facilities-based entrants. They also seem to have no problem with the fact that such above-economic cost pricing will impede the entry of ubiquitous facilities-based competitors who, they know, require economically priced interconnection, unbundled elements, and transport/termination in order to enter quickly and establish themselves in the local exchange and access markets. This anticompetitive view is propounded by the Bell companies, MFS, and some of the other incumbent local exchange carrier interests.[24]

A. The Established Economic Community Supports TSLRIC Pricing.

If the Commission is to carry out the mandates of the Act, it has no choice but to adopt the TSLRIC pricing standard for all interconnection, unbundled elements and transport/termination. This view is solidly grounded in basic economics, as thoroughly explained by Professors Baumol, Ordover, and Willig:

> Pricing of network elements should be based on economic costs, not book costs...Economic costs are calculated from

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[24] See, e.g., USTA, Ameritech, Bell Atlantic, BellSouth, Southwestern Bell, US West, USTA, MFS, and SNET.

> the standpoint of building production and service capability today, at current input prices, and in the fashion that is most cost effective in light of today's available technology, input prices, and expectations about demand....[E]conomic costs are long-run costs that reflect forward-looking efficient investment, including a return on capital consistent with competitive capital markets....Finally, disparities between economic costs and prices...[could result in] long-lasting inefficiencies in the allocation of resources to telecommunications and related sectors such as computing and information services. Such an outcome would be especially costly to society today, when fundamental decisions about the deployment and use of technology are up for grabs in the marketplace.
>
> ...Indeed requiring ILECs to offer network elements priced at TSLRIC-based rates (and also to offer complete local exchange services at wholesale rates to resellers) would serve the public interest even if facilities-based competition for every network element never materialized.[25]

Given the completeness of TSLRIC pricing of interconnection, unbundled elements, and transport/termination, there is no need for any additional "add-ons" or excess charges for recovery of "embedded costs." Thus, Sprint's suggestion that a 15% markup[26] be added must be rejected because it is neither based in sound economics nor the words of the Act itself.

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[25] See AT&T, Affidavit of William J. Baumol, Janusz A. Ordover, and Robert D. Willig at 2 *et. seq.*

[26] See Sprint at 43-50.

As to USTA, *et al.*'s groundless concerns as to whether TSLRIC will make prices "too cheap" because they might be below prices based on embedded costs,[27] Baumol, *et al.* point out:

> Concerns have been raised that network elements priced at TSLRIC would be so cheap as to deter efficient facilities-based entry. *These concerns are unfounded.* TSLRIC is a measure of incremental costs, not marginal cost. It includes all of the additional costs that society incurs by asking the incumbent carrier to supply the output of a network element. *If another carrier cannot produce that output as cheaply itself, then its facilities-based entry wastes resources and should not occur.*[28]

Given that TSLRIC-based rates capture all costs (including the risk-adjusted cost of capital) for interconnection, unbundled elements, and transport/termination, there is *no* problem of losses-by-design and, therefore, no problem with unlawful takings under the Fifth Amendment, as misguidedly alleged by some commentors.[29] Moreover, because TSLIRC uses the risk-adjusted cost of capital, it fully rewards investors with a competitive return. It is a play on words when some parties suggest that TSLIRC does not provide a

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[27]See, e.g., USTA at 41.

> Ironically, USTA concedes that TSLRIC does capture both fixed and usage sensitive costs of the elements being priced. Id. at 46. However, USTA suffers from the monopoly pricing flash-back syndrome when thinking that *future* prices should be based on *past* investments. Id. at 40. Frontier observes that this new USTA view was rejected by USTA and its members when they endorsed the use of price caps for interstate access charges *without* refunds for overearnings or rate of return regulation (*i.e.*, without regard for past investments and expenses.)

[28]Baumol, *et al.* at 7 n.3 (emphasis added).

[29]See, e.g., US West at 24-29.

"positive" return or "economic profits."[30] These terms, as used by these parties, mean only that TSLIRC does not provide above-market returns -- *i.e.*, profits in excess of those that investors would expect in a competitive capital market. Thus, these observations are simply an *endorsement* of the appropriateness of TSLIRC, not an identification of any deficiency.

B. Principles of Modern Finance Support TSLRIC Pricing.

Not only is the established economic community behind TSLRIC pricing, it is the pricing method of choice under the shareholder-value-maximizing principles of modern finance for a *competitive* firm.[31] As explained in the accompanying Morris Affidavit, basic modern finance teaches that the basis for deciding whether a competitive company should offer a new product or service is dependent on only *three* things: *future* cash inflows of the product (*i.e.*, revenues), *future* cash outflows required to provide the product (*i.e.*, cost of production on a cash flow basis), and a risk-adjusted discount rate applicable to those cash flows. Modern finance teaches firms to give no consideration to

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[30] E.g., USTA at 43.

[31] Although modern finance is related to economics, they are not the same. Modern finance deals primarily with the analysis of cash flows of a firm (or its component cash flows) and gives practical guidance to the firm of how to achieve its overall objective of maximization of shareholder value. In contrast, economics takes a more global, policy-oriented view, taking into consideration the objective of maximizing (or at least considering the effects on) consumer welfare as a whole, given the individual incentives of the firms in the marketplace. In a competitive market, the objectives of a firm using modern finance should align to produce maximization of consumer welfare using the principles of economics. Thus, it should not be surprising that modern finance instructs a competitive firm (*i.e.*, one operating in a fully competitive market) to price in a way that economics teaches will maximize overall market efficiency -- *i.e.* the use of TSLRIC pricing.

past cash flows (whether in the form of revenues or "embedded" costs), in determining future product offerings and their prices. As Baumol, *et. al.* point out, TSLRIC includes all costs of production, thus it should not be surprising that modern finance supports the use of only these forward- looking costs in determining whether and how to offer a new service or product. Those, such as USTA's Hausman,[32] who argue that embedded costs should play some role in future pricing of future services ignore the teachings of modern finance, as well as modern economics.[33] These backward views are simply flashbacks to pricing under a monopoly environment, and not the competitive environment that the Act seeks to create.

C. All Interconnection, Unbundled Elements and Transport/Termination Must Be Priced Based on TSLRIC.

A number of incumbent LECs argue that certain options for local services (such as Caller ID), when purchased as unbundled elements, should be priced at retail less avoided costs, rather than on the basis of TSLRIC (as required by section 252(d)(1)).[34] This approach would not only be in violation of the Act's specific provisions for the pricing of unbundled elements, it would also be economically irrational. The proposal to price *any* unbundled elements at their wholesale prices, rather than economic cost, is clearly

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32See USTA, Affidavit of Jerry Hausman, ¶¶ 3-5.

33The claims about TSLRIC creating disincentives to invest are also demonstrated to be misguided. Modern finance says that if prices are greater than or equal to TSLRIC, then the firm should go ahead with the product or offering, *i.e.*, should make the investment.

34See, e.g., Sprint at 36-39.

inconsistent with section 252(d)(1). Moreover, most of the wholesale rates for many local optional features would be priced far in excess of their TSLRIC prices because rates for such optional features are often deregulated or priced under less stringent pricing requirements. Thus, the proposal to use the inflated wholesale rate (rather than TSLRIC prices) for these unbundled elements would create inefficiencies (due to inflated prices and the resulting underconsumption). Such unlawful pricing would make it impossible for new entrants who purchase some unbundled elements at full, TSLIRC prices, together with inflated "wholesale-priced" unbundled feature elements, to compete with the subsidized (below TSLIRC-priced) loops and switching/retail option feature packages currently offered by the incumbent local exchange carrier.

D. Capacity Pricing of Unbundled Elements Should Not Be Artificially Sized To Block Out Smaller Competitors.

Sprint appears to suggest that each purchaser of unbundled local switching would not be able to purchase access to less than 60 to 180 "links" which are designed to accommodate up to 640 unbundled loop ports.[35] Sprint determines this minimum based on the size of a "Remote Line Concentrating Module."[36] Sprint begins with the hypothesis that a purchaser should not be allowed to share a concentrator, and thus must buy the whole concentrator (*i.e.*, pay for no less than a concentrator connected to 60 links). The Commission should view such minimums as suspect, particularly if no

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35Sprint at 34-36.

36See Sprint Simplified Diagram of DMS-100 Switch.

attempt is made to price out and make available (even with slightly different conditions) lesser quantities more suitable for smaller sized purchases by smaller entrants.[37]

E. Transport and Termination Is Only for "Additional Costs" Not Otherwise Covered by Other Network Components' Prices.

Transport and termination pricing under section 252(d)(2) of the Act is a pricing mechanism for covering mutual compensation of costs that were not already covered by the pricing of interconnection and unbundled elements under section 252(d)(1) of the Act provided by an ILEC. Transport and termination is not a separate service apart from interconnection and unbundling. Traffic can be fully transported and terminated on the incumbent LEC's network using solely the interconnection and unbundled elements purchased under sections 251(c)(2) and (3). Where this is the case, no transport and termination charges are required.

"Reciprocal compensation" is a general requirement for *all* local exchange carriers,[38] not simply incumbent local exchange carriers. Reciprocal compensation is simply a general case of how additional costs for traffic between a local exchange carrier and other carriers will be paid for. Section 252(d)(2) sets forth specific pricing obligations

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[37] For example, in the case presented by Sprint, smaller quantities of links could be made available by either selling in smaller quantities under terms that accommodate sharing of concentrators and links, or offering portions of a dedicated concentrator (while leaving the remainder of the concentrator and links unused) at a higher "per link" price (*i.e.*, selling smaller quantities of a shared concentrator).

[38] See 47 U.S.C. § 251(b)(5).

of an incumbent local exchange carrier to another carrier where mutual compensation is provided under section 251(b)(5).

Arguments such as those presented by Sprint that the termination of exchange access is excluded from "transport and termination"[39] fail to recognize the relationship between "transport and termination" and unbundled elements/interconnection. Sprint's reliance on the wording of section 252(d)(2) (for the pricing of certain terminating traffic) as limiting the scope of section 251(b)(5) is simply misguided. Section 251(b)(5) is, by its terms, general in nature -- providing for mutual compensation between a local exchange carrier and any other entity for the "transport and termination" of traffic. At best, section 252(d)(2)'s silence regarding the pricing by an incumbent simply meant that Congress did not intend to constrain the Commission on how to price the transport and termination by a non-incumbent under section 252(d)(2). Sprint is particularly inconsistent with its own argument where it claims that transport and termination *does* cover traffic transiting neighboring LECs. This inconsistency arises because the latter (*i.e.*, traffic transiting local exchange carriers) often involves the termination of exchange access calls that originate on another LEC or even from an interexchange carrier connected to that LEC -- the very traffic that Sprint alleges does not come within the confines of transport and termination. In sum, the general principles of transport and termination/ mutual compensation apply to all traffic, while section 252(d)(2) applies to incumbent pricing of mutual compensation involving any additional costs of transport and termination.

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[39]Sprint at 77.

IV. THE COMMISSION SHOULD REJECT REQUESTS THAT IT RENDER THE ACT'S RESALE MANDATE MEANINGLESS.

Perhaps the most concerted and flagrant attacks on the Act's pro-competitive purposes center on its resale provisions. Many large incumbent LECs and others attempt to read into the Act a strong policy preference for facilities-based competition. They, therefore, attempt to denigrate the Act's resale provisions by asserting that the Commission should imply numerous exceptions into the Act's resale mandate, contrary to the plain language of the Act. [40]

The statutory language of the Act is clear: an ILEC has the duty:

> to offer for resale at wholesale rates *any* telecommunications service that the carrier provides at retail to subscribers that are not telecommunications carriers. [41]

The language of the Act admits of no exceptions and the ILECs' attempts to create loopholes must fail. USTA typifies these claims by suggesting that: subsidized services need not be resold; promotional offerings and the like are exempt; and that ILECs may withdraw services at their pleasure. [42] These assertions are totally without merit.

The Act does not even contain an exception for subsidized services. It provides only that limited classes of services may be prohibited from being cross-sold, *i.e.*,

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[40] See, e.g., USTA at 2, 71-73.

[41] 47 U.S.C. § 251(c)(4)(A) (emphasis added).

[42] USTA at 71-73.